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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-&E-L-, INC.

DATE: MAR. 2, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a home/office furniture retail business, seeks to employ the Beneficiary permanently in the United States as an accountant pursuant to Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), which provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor.

The Director, Texas Service Center, initially approved the petition on December 15, 2009. On October 30, 2013, the Director issued a notice of intent to revoke (NOIR) the approval of the petition and, subsequently, a notice of revocation (NOR) was issued. The Director determined that the Form I-140 immigrant petition could not be approved because, pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c) (2012), the Beneficiary had previously engaged in marriage fraud for the purpose of evading the immigration laws. Specifically, the Director found that the Beneficiary entered into a fraudulent marriage with [redacted] in an attempt to obtain an immigration benefit on her behalf.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary did not willfully misrepresent or conceal any material fact in order to procure an immigration benefit. Upon *de novo* review, we will remand the matter to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

I. MARRIAGE FRAUD BAR

Section 204(c) of the Act provides:

> Notwithstanding the provisions of subsection (b) of this section no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

Subsection (2) of this provision incorporates the Immigration Marriage Fraud Amendments of 1986 (IMFA), by which Congress revised the bar to include cases where "the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws." Pub. L. No. 99-603, § 4, 100 Stat. 3537, 3543 (Nov. 10, 1986).

On appeal the Petitioner contends that the Beneficiary has not obtained any benefit or applied for any benefit as a result of his marriage to The Petitioner contends that the Beneficiary was unaware of true identity or her previous visa application denial and entered an arranged marriage with in good faith. The Petitioner also contends that, after second visa application was denied, the Beneficiary and combined funds for a down payment on a house together in Texas in order to take advantage of the market and that such actions did not constitute evidence that the Beneficiary always intended to remarry In support of these contentions the Petitioner submits the divorce records for the Beneficiary's marriages to and letters from various family members and friends.

Government databases indicate that, on June 6, 2007, applied for an H-4 nonimmigrant visa based on her marriage to the Beneficiary with the U.S. Consulate in New Delhi.[1] It was determined that had previously applied for a nonimmigrant visa under a different identity. Government databases indicate that had previously identified herself as with date of birth , and parents and The initial application indicated that would stay with (the Beneficiary's first wife) at an address in New York (an address at which the Beneficiary and his first wife claimed to reside at the time).

In a March 30, 2010 sworn statement, the Beneficiary stated that he was aware that and were related, noting that the two women were distant cousins. However the record suggests that the Beneficiary's first spouse, and his second spouse, are sisters. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In any future filings, the Petitioner must submit independent objective evidence to establish the relationship between and

On appeal, the Petitioner submits October 11, 2014, letters from the Beneficiary's sons with and attest to their parents' relationship and state that the marital relationship began to have trouble in 2003 when the Beneficiary left the United States to visit his father. The letters go on to state that the Beneficiary returned to the U.S. in 2004 and then

[1] Government records indicate that listed her date of birth as her parents' names as and and her only relative in the United States as the Beneficiary.
[2] The record includes the Beneficiary's divorce decree from which indicates that her father's name was also

divorced in 2007, marrying that same year. The letters also state that the Beneficiary divorced in 2009 and remarried in 2010.

U.S. Citizenship and Immigration Service (USCIS) records reflect that last entered the United States as an A-2 nonimmigrant on November 3, 2005. However, this is inconsistent with the Beneficiary's , 2007, divorce decree from . The divorce decree states that was residing in India with her parents in 2004 and was present in India in 2007 for the divorce proceedings.

The Beneficiary's divorce decree from is also inconsistent with USCIS records which indicate that the Beneficiary returned to and has remained in the United States since May 13, 2007. The 2010, divorce decree is formed on the basis that the Beneficiary was present in India on June 27, 2007, and on October 25, 2007.

In any future filings, the Petitioner must provide independent objective evidence to overcome the inconsistencies in the divorce decrees and travel noted above. *Matter of Ho*, 19 I&N Dec. at 591-92.

As a basis for denial, it is not necessary that the beneficiary have been convicted of, or even prosecuted for, the attempt or conspiracy to enter into a marriage for the purpose of evading the immigration laws. However, the evidence of such attempt or conspiracy must be documented in the foreign national's file and must be substantial and probative so that the director could reasonably infer the attempt or conspiracy. *See Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). *See also Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972).

While there are many inconsistencies in the record relating to the Beneficiary and his marriages to and , the evidence currently in the record does not include substantial and probative evidence to determine that the Beneficiary has attempted or conspired to enter into a marriage for the purposes of evading immigration laws. Upon remand, the Director may seek further evidence that is substantial and probative of whether the Beneficiary has attempted or conspired to enter into a marriage for the purposes of evading immigration laws.

II. BENEFICIARY QUALIFICATIONS

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Part H of the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's degree in accounting or banking.
H.5. Training: None required.
H.6. Experience in the job offered: 60 months of experience.

H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 60 months of experience as a bank officer, bank manager/senior manager.
H.14. Specific skills or other requirements: Financial Management.

Part J of the labor certification indicates that the highest education the Beneficiary achieved in relation to the proffered position is a bachelor's degree in commerce and accounting from the and completed in 1986. The record contains a copy of the Beneficiary's Bachelor of Commerce diploma from the India, completed in 1983 and a copy of his Post Graduate Diploma (PGD) in business administration diploma from completed in 1986. However, the record does not contain copies of transcripts for the Bachelor of Commerce or PGD. In any future filings, the Petitioner must provide copies of the transcripts for these degrees.

The Petitioner relies on the Beneficiary's Bachelor of Commerce and PGD as being the foreign equivalent of a U.S. bachelor's degree.

The record contains an undated evaluation of the Beneficiary's educational credentials prepared by for The evaluation states that the Beneficiary's Bachelor of Commerce and PGD are equivalent to a bachelor's degree of business administration in accounting in the United States. The record also contains an evaluation of the Beneficiary's education credentials prepared by for on July 27, 2009. The evaluation states that the Beneficiary's Bachelor of Commerce and PGD are equivalent to a bachelor's degree in business in the United States. The two evaluations are inconsistent regarding the field of the Beneficiary's educational credentials. *Matter of Ho*, 19 I&N Dec. at 591-92. Furthermore, the documentation in the record does not reflect that the Beneficiary's educational credentials are in the required field of accounting or banking.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher

[3] USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the beneficiary's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Commr'r 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* http://edge.aacrao.org/info.php. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[4]

According to EDGE, a three-year Bachelor of Commerce degree from India is comparable to "three years of university study in the United States."

EDGE further discusses postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate degree. EDGE states that a postgraduate diploma following a two-year bachelor's degree represents attainment of a level of education comparable to one year of university study in the United States. EDGE also states that a postgraduate diploma following a three-year bachelor's degree represents attainment of a level of education comparable to a bachelor's degree in the United States. However, the "Advice to Author Notes" section states:

> Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

While AICTE's website indicates that [redacted] is accredited and approved to issue PGD's in certain fields, it does not indicate that [redacted] was approved by AICTE to issue PGD's in business administration. *See* www.aicte-india.org (accessed February 25, 2016). In any future filings, the Petitioner must submit evidence to establish that [redacted] is AICTE approved to issued PGD's in business administration.

[4] In *Confluence Intern., Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degrees were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

When the beneficiary relies on work experience or a combination of multiple lesser degrees, the result is the "equivalent" of a degree rather than a "foreign equivalent degree" under 8 C.F.R. § 204.5(k)(2).

In any future filings, the Petitioner must submit evidence to establish that the Beneficiary possessed the minimum required education as set forth on the labor certification, specifically, a U.S. or foreign equivalent bachelor's degree in accounting or banking.

Part J states that the Beneficiary qualifies for the proffered position based on experience as a bank manager with the India, from August 1, 1992 to March 7, 2000; a bank/senior manager with , from March 8, 2000 to May 23, 2003; a bank officer with India, from September 6, 2003 to January 4, 2004; a bank manager with India, from January 5, 2004 to September 12, 2004; and in the proffered position with the Petitioner since October 1, 2004. The labor certification lists no other employment. The ETA Form 9089 was signed by both the Petitioner and the Beneficiary under penalty of perjury.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states:

> Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The record contains a June 20, 2007, experience letter from chief executive, on letterhead, stating that the company employed the Beneficiary as senior manager (funds) from March 9, 2000 to May 23, 2003. However, the letter does not contain a description of the Beneficiary's job duties. Further, the year 2003 on the letter appears to have been altered by hand writing the number 3 over the year 200_. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

The record includes letters from the to the Beneficiary concerning various appointments and transfers from 1984 to 1993 and the Beneficiary's resignation in 2004. However, none of these letters include a job title or description of the Beneficiary's duties.

The experience letters discussed above do not meet the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A). Therefore, the record does not establish that the Beneficiary meets the labor certification's experience requirements or section H.14 requirement of specific skills in financial management.

The record also contains a number of experience letters from the Petitioner confirming his employment in the proffered position since October 2004. However, in response to question J.21, which asks, "Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?," the Petitioner answered "no." In general, if

the answer to question J.21 is no, then the experience with the employer may be used by the Beneficiary to qualify for the proffered position if the position was not substantially comparable.[5] Here, the record indicates that the Beneficiary's employment with the Petitioner has solely been in the proffered position and may not be used as qualifying experience.

In any future filings, the Petitioner must submit evidence that the Beneficiary meets the minimum educational and experience requirements as stated on the labor certification.

ORDER: The decision of the Director, Texas Service Center is withdrawn. The matter is remanded to the Director, Texas Service Center for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of B-&E-L-, Inc.*, ID# 12898 (AAO Mar. 2, 2016)

[5] A definition of "substantially comparable" is found at 20 C.F.R. § 656.17:

> 5) For purposes of this paragraph (i):
>
> . . .
>
> (ii) A ''substantially comparable'' job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.